Supreme Court of the United States.

WILSON R. HUNTER,
Plaintiff in Error,

AGAINST

MUTUAL RESERVE LIFE INSURANCE COMPANY,
Defendant in Error.

October Term, 1910.
No. 39.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

By consent of the Defendant's counsel, and subject to permission of the Court, the Plaintiff in Error files this brief in reply.

STATEMENT.

Certain arguments advanced by defendant may require examination. By way of preface to this, we may restate the plaintiff's position as elaborated in the main brief.

We urged that, as insurance does not fall within the category of commerce, a State has the arbitrary power to prohibit a foreign corporation from negotiating and per-

forming contracts of insurance within her confines, (Points I, II, III, Main Brief); that, as an incident of the power to exclude, is the authority to prescribe conditions, (Point IV) which, if accepted, are binding on the foreign corporation (Point V). That one of the antecedent conditions for a foreign insurance company to do business in North Carolina, as required by the Willard Act (Record, p. 5, Act of 1889), was the appointment of the State Insurance Commissioner as attorney upon whom "*all lawful process in any action or legal proceeding against it may be served*" (p. 6, fol. 10, to continue "*in force and irrevocable so long as any liability of said company remains outstanding in the State.*" (Rec., p. 6, fol. 10). We further contended that, as the Defendant Company had accepted these conditions, filed such a power of attorney, and done business in the State, the authority of the Insurance Commissioner to accept process for it continued (1) so long as it was "*found*" within the State engaged in business, or (2) if it ceased to do business, then so long as it had liabilities outstanding in the Commonwealth. (Point V.) It was then argued that, on the facts in the Record, the Defendant persisted in doing business within the State, and was so found at the time of the service of process in question (Point VI, p. 16-31). Hence it was estopped to question or revoke the Insurance Commissioner's authority to receive the writ for it, and its purported revocation was ineffective. And finally we claimed that, even if it were not as a fact found in business in the State, still it was *found* there for the purpose of all suits of which the North Carolina Courts had jurisdiction, because both by the statute and by the express words of its contract with the State, it had agreed to be found therein, so long as it had liabilities outstanding therein (a conceded fact, p. 9, fols. 16-7).

Let us turn to the Defendant's contentions.

POINT I.

THE DEFENDANT IN ERROR DOES NOT MEET THE CONTENTION, THAT AS THE INSURANCE COMPANY CONTINUED TO DO BUSINESS WITHIN THE STATE, THAT FACT PRECLUDED IT FROM REVOKING THE POWER OF ATTORNEY TO THE INSURANCE COMMISSIONER.

The learned counsel for the Defendant in Error do not attempt to avoid the first argument so advanced. They do not seriously argue that, on the facts in this record, and the decisions of this Court in the Spratley (172 U. S., 602), Phelps (190 U. S., 147) and Davis (213 U. S., 245) cases, the Defendant Company did not continue doing business in North Carolina after its attempted revocation. But they maintain that as the power of attorney was by its inherent nature, and by a fair construction of the statute, revocable except as to citizens who, in reliance on it, had entered into contracts of insurance, the question whether the Defendant continued doing business in North Carolina in violation of law, is immaterial. Their reasoning proceeds in this wise: The power of attorney was revocable or irrevocable. If revocable, then whether the company continued doing business in the State has no bearing on the issues, because the process was not served on an agent of the Defendant. If irrevocable, then, it is likewise immaterial whether the company continued its State business, because jurisdiction was obtained by consent. (Defendant's Brief, p. 17).

The argument being reduced to this dilemmatic form, counsel proceeds to establish that the power of attorney was *revocable* by its nature (Defendant's Brief, p. 10), and by a fair construction of the Willard Act (Brief, p. 12), except as to local policy holders. It is easy to expose the sophistry concealed in such reasoning.

Counsel covertly assumes in his favor the whole point of the argument. He assumes in advance that the power of attorney was revocable, even though the company continued to do business in the State.

It is quite true that the power of attorney was revocable or irrevocable. But it was irrevocable for another reason than because of the statute and its express words, that continued its life until all liabilities were satisfied. *It was irrevocable while the company continued in business in the State.*

The Plaintiff maintains that a foreign corporation cannot, as a price of admisison to a State, consent to being sued there in all actions of which the Courts have jurisdiction, and appoint a State officer to receive process for it, and then while continuing to do business revoke the appointment.

This is the law, irrespective of any stipulation to that effect in the letter of appointment or in the statute.

It is true because a foreign corporation cannot be found within a State, yet dispute the provisions as to the method of obtaining service of process on it. If the arguments of counsel were sound, it would put a premium on the Defendant's violation of the law of North Carolina. There would be no possible way of commencing an action against an unlicensed foreign corporation that had revoked the Insurance Commissioner's authority, yet continued doing business in the State in disregard of the law. In other words, such a doctrine would reward such foreign com-

panies as refused to obey the law, by shielding them from the enforcement of all liabilities in the courts of North Carolina.

A similar argument was met and answered by this Court in Henrietta Mining Co. vs. Johnson, 173 U. S., 224; and also in State vs. Insurance Company, 67 Wisc., 624, quoted with approval by this Court.

An illustration will expose the fallacy of Defendant's position. Assume that the Defendant Company continued doing business in the State of North Carolina, with local offices and agents therein, soliciting new business as theretofore. Let it further be assumed that while such business continued, it had attempted to revoke and cancel the power of attorney of the Insurance Company, yet persisted in business, would it be seriously maintained that this revocation was effectual? Would it be for an instant argued that thereafter service of process on this State official in any action of which the North Carolina courts had jurisdiction was not sufficient to sustain a judgment *in personam?* We apprehend that even the learned counsel for Defendant would not seek to posit this.

If not, then the question of whether the Defendant continued in business in the State after the purported revocation, is vital to the solution of the question before the Court, because so long as that business continued, the authority of the State Commissioner to receive process for it continued.

It is hardly necessary to point out that this was the underlying principle of the decisions of this Court in the Spratley, Phelps and Davis cases.

The method of procuring jurisdiction and the officer or agent of the corporation to whom notice of the suit is to be given lie wholly in legislative enactment. There is no limi-

tation on the power of each State to define the class of such agents, except that it must be so far representative as to bring home to the company notice of the suit.

It has never been doubted that the designation of a State official whose public duty it is to transmit notice is a proper agent.

If it lay wholly within the power of the corporation to select the class of its agents who should receive process, it could, by appointing an agent not to be found, readily avoid all suits against it. As the Court said in St. Clair vs. Cox (106 U. S. 350), "the moment the boundary of the State is passed difficulties arise. It is not so easy to determine who represents the company there, and under what circumstances service on them will bind it."

If the corporation is a domestic one, the law designating the agent to receive process attaches to it because it is born under it. If, contrariwise, it is a foreign corporation, the law attaches because of the fact that it is *found in the State*, i. e., *doing business there.*

These principles are embedded in our law. They found expression in the decisions of this Court in the Spratley, Phelps and Davis cases. In each of these cases this Court found as a fact that the Insurance Company continued to do business within the State after its apparent withdrawal or expulsion. Hence it was held to be within the grasp of the State law defining the agent on whom process was to be served.

In the Spratley case (172 U. S., 602), it was held that service of process on an agent who was sent into the State to investigate and adjust a death loss, was sufficient to sustain a *personal judgment* because he came within the class designated by the State law, even though he had no express authority. It is to be noted that this service was after the com-

pany had ceased issuing new policies in the State, withdrawn its agents, and had so notified the State officials.

In the Davis case (213 U. S., 245) it was held that service on a physician sent to examine the deceased body, who had authority to settle the claim was sufficient even though he had no express authority to receive process.

And in the Phelps case (190 U. S., 147) it was held that service on the State official was sufficient, even though his authority was expressly revoked by the corporation.

In each of these cases there was no estoppel in favor of the policy holder, because there was no provision either in the State statutes or in any agreement between the State that either the State Commissioner's authority or that of any local agent should continue a day after the company withdrew from the State. By no possibility could the policy holder, who was the Plaintiff in each of these cases, be said to have relied on the fact that he could thereafter continue to sue the Company in his home State.

Every element of an estoppel was lacking.

In the Spratley and Davis cases it was merely a chance agent who was sent into the State for a limited purpose. This fact alone could not sustain jurisdiction, any more than service on an officer of a foreign company who was traveling in the State for pleasure.

It was the added fact in each case that the company was at the time of service of process, doing other business, a continuous business in the State, and that it was found in the State, that made the service of process on the agent valid even though he had no express authority. Had the companies not been doing business, the fact that the agent had not *express* authority to accept service would have been fatal, because jurisdiction then would depend on consent.

But, as the company was doing business in the State, and this Court so found on the identical facts in the record here, express authority was not a prerequisite. The Company was subject to the laws of the State, and service on it could be made *in invitum.*

The foreign company cannot be heard to question the agent's or State official's authority while it continues business. As this Court said in Railroad Co. vs. Harris, 12 Wall., 65: *"If it do business* there, *it will be presumed to have assented* [i. e., to be sued], *AND WILL BE BOUND ACCORDINGLY."* In the case last cited, it is to be noted in passing that the cause of action in fact arose outside of the jurisdiction where the foreign corporation was sued, i. e., District of Columbia.

And in the Sprately case (172 U. S., 614), this Court stated, "*The consent* [to receive service] was implied *because of the company entering the State and doing business therein subject to the provisions of the Act.*"

In the Ehrman case (1 Fed. Rep. 471), the Court on a similar question said:

> "That the stipulation was not in fact filed with the Auditor [State official] is of no consequence, if the company has done those things which imposed upon it the obligation and duty to file it. The law deduces the agreement on the part of the Company to answer in the courts of this State on service made upon the Auditor, from the fact that it is doing business in the State, and the presumption from that fact, of assent to service in the mode prescribed by the statute is conclusive and no averment or evidence to the contrary is admissable to defeat the jurisdiction."

Other cases establishing the same doctrine are cited in Plaintiff's Brief, (p. 33).

Thus we see that all lines of reasoning bring us to the same question. Was the Defendant Company doing business in the State of North Carolina at the time of service of process? That it was we submit has been fully shown [Plaintiff's Brief, Point VI].

We may enforce this contention by an excerpt from the opinion of Mr. Jusice Day in the Davis case (213 U. S., 246, at 255). It is there said:

> "Was the Defendant doing business in the State of Missouri? The record discloses, and the court has found, that it had other insurance policies outstanding in the State of Missouri. Upon these policies undoubtedly premiums were paid, and it was the right of the company to investigate losses thereunder, to have an examination of the body of the deceased in proper cases, and to do whatever might be necessary to an adjustment or payment of any loss. The record shows that the company sent Dr. Mason to Fayette to investigate the loss sued for in this case, and later, and at the time of the service of the process, Mason was in Missouri with full authority to settle the loss in controversy.
>
> "Previous cases in this Court have not defined the extent of the business necessary to the presence of a foreign corporation in the State for the purpose of a valid service; it is sufficient if it is doing business therein. We are of opinion that the finding of the Court in this case is supported by testimony, and that the corporation was doing business in Missouri."

The Defendant's counsel seeks to avoid the force of the decisions of this Court in the Spratley, Phelps and Davis cases by contending that there are degrees of "doing business," that a foreign corporation may be so far doing business and found in a State as to local policy holders, but not "doing business" as to other claimants. (See Defendant's Brief, p. 18-19). In other words, counsel would make the nature of Plaintiff's claim the test of whether the company was or was not doing business and found within the foreign State.

We submit that such a distinction is illogical and wholly illusory. It would lead to all sorts of absurdities and confusions. For example, a plaintiff is the beneficiary of two policies of insurance, one taken out in North Carolina, and one in New Jersey. One suit is brought in the courts of North Carolina on both these policies; on the first cause of action it is found as a fact that the company was doing business at time of service of process, and on the second cause by the same plaintiff against the same defendant, in the same suit, before the same court, on the same evidence, it is held that the company is not doing business.

We submit this Court did not intend to announce any such doctrine.

Passing now to the second argument advanced by counsel. On this we submit

POINT II.

THE POWER OF ATTORNEY WAS NOT INHERENTLY REVOCABLE (1) BECAUSE IT WAS GIVEN FOR AN EXECUTED CONSIDERATION PASSING FROM THE STATE TO THE DEFENDANT, AND (2) BECAUSE BY ITS EXPRESS TERMS ITS TERM OF LIFE DID NOT EXPIRE WHILE OUTSTANDING LIABILITIES CONTINUED.

The claim of the Defendant Insurance Company is that all powers of attorney not coupled with an interest are revocable, (citing various authorities).

When examined critically, these authorities do not sustain the broad proposition claimed. The true statement of the rule is that, while a power of attorney is ordinarily revocable at will, yet when it is coupled with an interest or *given as security*, or *as part of a contract*, or *for a valuable consideration which the law deems sufficient to uphold an executory contract, or when it is given to a public officer of the State for the protection of its citizens*, it is irrevocable.

Mechem on Agency, (Section 232), reads as follows:

> "Where the State requires the creation and maintenance of an agency to subserve some purpose in which its citizens may have an interest, the authority of an agent appointed in pursuance of such a requirement cannot be revoked at the mere will of the principal, unless for the appointment of another in his place while the exigency continues against which the statute was intended to provide. *Thus, where a statute required any foreign insurance company doing business within the State to appoint an agent within the State upon whom process against the Company might be served, it was held that the company, having appointed such an agent, could only revoke his authority upon the appointment of another.*"

Another authority cited by Defendant is Hunt vs. Rousmainer (8 Wheaton, 174). It was there held that a power of attorney not coupled with an interest is revoked by *the death of the principle*. But Chief Justice Marshall, in writing the opinion in that case, was careful to state the circumstances under which a power of attorney is irrevocable, using the following words:

> "The general rule, therefore, is that a letter of attorney may, at any time, be revoked by the party who makes it, and is revoked by his death. But this general rule, which results from the nature of the act, has sustained some modifications. Where a letter of attorney forms *part of a contract, and is security for money, or for the performance of any act which is deemed valuable*, it

is generally made irrevocable in terms, or if not so is deemed irrevocable in law. Although a letter of attorney depends from its nature on the will of the person making it, *AND MAY IN GENERAL BE RECALLED AT HIS WILL, YET IF HE BINDS HIMSELF, FOR A CONSIDERATION, IN TERMS OR BY THE NATURE OF HIS CONTRACT, NOT TO CHANGE HIS WILL, THE LAW WILL NOT PERMIT HIM TO CHANGE IT.*

"Rousmainer, therefore, could not during his life, by any act of his own, have revoked this letter of attorney."

The other authorities establish the same doctrine, that a power of attorney given for a valuable consideration or as security is irrevocable.

McGregor vs. Gardner, 14 Ia., 326.
Ewel's Evans Agency, page 110, note 1.
2 Kent's Commentaries, 643.
Story on Agency (9th Ed.), p. 587.
Terwilliger vs. Railroad Co., 149 N. Y., 87.

It thus appears that the authorities are unanimous in holding that a power of attorney either coupled with an interest or *created by a contract for a valuable consideration* moving from the agent cannot be revoked at the will of the principal. Applying these principles to the facts here, we see that the company, for a valuable consideration and as part of a contract by virtue of which it obtained the valuable privilege of doing business in the State of North Carolina, created the power of attorney to the Commissioner of Insurance of that State to receive process so long as any outstanding liabilities remained in that State.

This authority and power of attorney was required from the Insurance Company for the benefit, security and protection of all the citizens of North Carolina, and, under the authorities cited, was irrevocable for that reason.

See Collier vs. Mutual Reserve Ins. Co., 119 F. R. 619.

Counsel asks, "What did the State contract to do?" We answer, it agreed to permit this Defendant corporation to do business within its borders, and it carried out this agreement. The company availed itself of this privilege. That was the consideration. It mattered not how long the business continued. The record shows that Defendant availed itself of this privilege and continued to do so for many years. "*From prior to March* 1883," (Record, p. 3), *to May* 17, 1899 (p. 7), it was admittedly in the State doing an active insurance business. (Record, p. 9, fol. 16.), and during all this time the Defendant obtained this valuable privilege by its solemn agreement "that a State official could accept service for the company" even after it had ceased to do business, "*so long as liabilities remained outstanding in this State.*" (Laws 1876, p. 2-3, fol. 4-5; Laws 1883, p. 3-4, fol. 5-7; Laws 1889, p. 4-7).

Can it be said that there is not a sufficient consideration moving from the State to the company to enforce its contract?

The very decisions of the North Carolina Courts construing this statute cited by Defendant's counsel point out this fact. It is said (Moore vs. Mutual Reserve, 129 N. C. 31, Rec. p. 15, fol. 26). "It (power of attorney) was contractual in its nature, was *given upon consideration that the Defendant should have the right to carry on its business in this State.*"

We submit, on the plainest principles of common law and policy, the irrevocability of the power should be sustained.

The consideration to support a contract is not necessarily continuing in its nature.

The admission of the corporation to the State to do business is sufficient to sustain the company's agreement to domesticate or preserve a local forum for suit until a certain period has elapsed, even though in the interim the business

of the company ceased. The Phelps case established this. A unilateral contract is as valid in law as a bilateral.

A word may be said here as to the Craig Act. Counsel would seem to imply that the State of North Carolina had in some way withdrawn its permission to the Defendant to do business therein. No such state of facts exists here. The Defendant, for reasons of its own, voluntarily withdrew from further new business in the State, just as the insurance company did in the Spratley case.

The Craig act has no bearing on this controversy.

The point so raised seems to be that, assuming that the power of attorney filed by Defendant on April 13, 1899 was irrevocable so long as it had existing liabilities in that State, the State, by passing the Craig act, abrogated this contract and absolved the Defendant from its obligation thereunder. This act (ratified February 10, 1899) provided that it should be in force from and after its ratification. It provided that every foreign insurance company doing business in North Carolina on and after the 1st day of June, 1899, should become a domestic corporation of that State under certain penalties. (Record, pp. 7-8).

If there existed a valid contract between the State and insurance company for the benefit of a policy holder, the Craig act could have no effect upon it.

But, the whole argument proceeds upon a false assumption of fact. The Craig act was not passed by the legislature *subsequent* to the contract between the state and the insurance company, but passed and ratified *prior* thereto, i. e. on February 10, 1899. The power of attorney was not filed by Defendant until April, 1899, some two months after the Craig act was ratified and in effect.

In filing its power of attorney and entering into the agreement with the state that such power of attorney should be irrevocable, Defendant did so with full knowledge of the provisions of the Craig act. It is conclusively presumed to have entered into this contract with full knowledge of and subject to the provisions of that act.

Mutual Life Ins. Co. vs. Phinney, 178 U. S., at p. 327.

The Willard act, under which the power of attorney was filed, became effective upon its ratification, March 6, 1899. It provided specifically that "any other laws and clauses of laws in conflict with this be and the same are hereby repealed." The power of attorney was filed by Defendant on April 17, 1899. On this record it might be plausibly urged that in so far as any of their provisions conflicted, the Craig act was repealed by the Willard act. Any argument based by counsel for Defendant on the Craig act falls; it is plainly an afterthought; Defendant was not excluded from the state thereby, but was merely required to file in the office of the Secretary of State a duly authenticated copy of its charter in order to enable it to continue business in the state. The act declared that the result of this should be to make the company a domestic corporation. The statement that the company was "driven" from the estate, is hardly correct. The real reason of the attempted withdrawal is apparent; it was to avoid the payment of judgments similar to that in the case of Strauss vs. Mutual Reserve (126 N. C., 971), decided at trial term, February 12, 1899. Under the authority of that case, the insurance company became liable to all its North Carolina policy holders by reason of its breach of the contracts of insurance theretofore entered into with citizens of the state. Its attempted withdrawal was plainly to avoid the effect of the Strauss decision.

It appears from the opinion of the Supreme Court of North Carolina in the case of Biggs vs. Mutual Reserve (128 N. C., 5, at p. 7), that appellant company did attempt to

domesticate under the terms of the Craig act. (p. 16, fol. 28).

Turning to the other contention advanced by Defendant's counsel, that the statute and its accompanying power of attorney were enacted for the protection of citizens who had controversies growing out of the business done in North Caroline, i. e., local policyholders, we submit that even if this was the primary motive, it does not follow that the sole motive or the act is so confined. Its broad wording indicates a more extended purpose, to afford to all the citizens of North Carolina a local forum to litigate their controversies, wherever arising. The words used in the act are most comprehensive; they are "*process in any action or legal proceeding.*"

It is incredible that the legislature in using these broad phrases should have intended to limit the authority to controversies arising on local contracts.

See West vs. City Council, 2 Peters, 449, 464.

There is no law forbidding a State opening its Courts to controversies based on contracts made elsewhere or between non-residents. Most of the States permit suits on causes of action arising elsewhere. The State of North Carolina is among this number. It expressly permits suit by a resident against a foreign corporation on any cause of action. Why then should the legislature not make the Insurance Commissioner's authority co-extensive with the jurisdiction of its Courts. The act so says. The agreement between the State and the Defendant so states. Prior legislation voiced such an intention (Record, p. 2, fol. 4, p. 5, fol. 6). The Craig act itself, which required foreign insurance corporations to domesticate, is but another evidence of the State's uniform policy of compelling insurance companies doing business within its borders to submit all controversies of every sort, whereever arising, between it and the citizens of the State to the

local Courts. What, we ask, is there unjust or inequitable in requiring this? Why could not the State afford a local forum to all its citizens equally, and not to the limited few who dealt with the corporation? The plain words of the statute compel this construction.

We submit

POINT III.

THE JUDGMENT OF THE COURT OF APPEALS OF NEW YORK SHOULD BE REVERSED AS PRAYED FOR.

Respectfully submitted,

PAUL ARMITAGE,

Counsel for Plaintiff in Error.

Supreme Court of the United States,

OCTOBER TERM, 1910.

No. 39.

WILSON R. HUNTER,

Plaintiff-in-Error,

vs.

MUTUAL RESERVE LIFE INSURANCE COMPANY,

Defendant-in-Error.

Error to the Supreme Court of the State of New York.

BRIEF FOR DEFENDANT IN ERROR.

WM. HEPBURN RUSSELL,
FRANK H. PLATT,
Of Counsel for Defendant-in-Error.

New York:
Stillman Appellate Printing Co.
1910.

Supreme Court of the United States.

WILSON R. HUNTER, Plaintiff in error, vs. MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant in error.	October Term, 1910. No. 39.

BRIEF FOR DEFENDANT IN ERROR.

Statement.

This case comes before this Court upon writ of error to review a decision of the Court of Appeals of New York (Record, p. 44, fol. 77 *et seq.*), which denied the right of the plaintiff to enforce against the defendant in New York four judgments which had been rendered against the defendant, upon its default in appearing by the Superior Court of North Carolina, and which had thereafter been assigned to the plaintiff (Record, p. 21, fol. 35; p. 23, fol. 39; p. 25, fol. 43; p. 28, fol. 47).

These four judgments were recovered by one Enoch Wadsworth, a resident of North Carolina, who was the assignee, in each case, of the alleged cause of action sued upon, and who in each case joined with himself as co-plaintiff, the assignor of such cause of action. The causes of action were identical in their nature, each being for alleged breach of a contract of insurance, in increasing the assessments thereon, the damages sought to be recovered being the amount of such increased assessments (Record, p. 20, fol. 35; p. 23, fol. 38; p. 25, fol. 42; p. 27, fol. 46).

The assignors of three of these causes of action were citizens of the State of New York, and the contract, the breach of which was alleged, was in each case made in the State of New York, long prior to the year 1899. The assignor of the fourth alleged cause of action was a citizen of the State of New Jersey, and her contract with the defendant was likewise made long prior to the year 1899 (Record, p. 19, fol. 32; p. 21, fol. 36; p. 23, fol. 39; p. 26, fol. 43).

The several assignments were made to Wadsworth in December, 1901, and January, 1902, respectively (Record, p. 20, fol. 35; p. 23, fol. 38; p. 25, fol. 42; p. 27, fol. 46), and action was begun in each case upon January 20, 1902.

Alleged service of process in each action was made by delivering a copy of the summons to the Insurance Commissioner of North Carolina, who at once forwarded the same to the defendant in New York (Record, p. 19-27). The defendant did not appear in any of said actions, and judgment was entered against it by default (Idem).

There was a fifth cause of action upon which judgment was rendered against the defendant, but as that arose upon a contract of insurance made by the defendant with a resident of North Carolina while duly authorized to do and actually doing business in North Carolina, the Court of Appeals of New York sustained the plaintiff's right to recover thereon (Record, p. 16-19; p. 44, fol. 78). This fifth cause of action is not in controversy here.

The Court of Appeals denied the plaintiff's right to recover in New York upon the four other judgments, upon the ground that the Superior Court of North Carolina did not, at the time of the entry thereof, have jurisdiction of the defendant corporation (Record, p. 44 *et seq.*).

The facts upon which that question had to be determined are as follows:

The defendant in error was a corporation organized under the laws of the State of New York to carry on the business of life insurance upon the co-operative or assessment plan (Record, p. 2, fol. 3). It began to do business in North Carolina in 1883, having first complied with the laws of that State, and

been duly admitted to transact business there (Record, p. 3, fol. 4; p. 4, fol. 6), and continued to carry on such business until May 17, 1899 (Record, p. 9, fol. 16).

By the North Carolina Act of 1899, called the Willard Law, Chapter 54, Laws of North Carolina of 1899, there was established a new department of the government of that State, and a new State officer was created, called the Insurance Commissioner, and it was provided that no foreign insurance company should be admitted and authorized to do business until it should, by an instrument filed in his office, appoint the Insurance Commissioner, its attorney for the service of legal process against it, and therein should agree that any such process thus served should be of the same force as if served on the Company, and that the authority thereof should "continue in force irrevocable so long as any liability of the Company remains outstanding in this Commonwealth." This last statute went into effect March 6, 1899 (Record, pp. 4-5, fols. 7-9).

On or about April 13, 1899, the appellant Company, desiring to continue to transact business in North Carolina, executed and filed with the Insurance Commissioner a power of attorney in the language of the last mentioned statute, and thereupon, upon payment of the statutory fee, the Insurance Commissioner, pursuant to the Willard Law of 1899, issued to this Company a license, empowering it to make in that State contracts of life insurance on the assessment plan during the ensuing year, that is, the insurance year ending April 1st, 1900 (Record, p. 6, fols. 10-11).

By another statute enacted in the same year, 1899, called the Craig Law, the State of North Carolina withdrew the comity by which foreign insurance companies and other specified companies had been permitted to enter that State and transact business under certain conditions, and declared as its general law that, after June 1st, 1899, no foreign insurance company, or other such company, should be permitted to transact any business in North Carolina upon any terms whatsoever. By this last mentioned statute, Chapter 62 of the Laws of North Carolina of 1899 (Record, p. 78, fols. 12-14), it was provided that every such corporation of the various classes, including insurance companies, organized under the

laws of any State other than North Carolina, desiring to own any property, to carry on business, or to exercise any corporate franchise whatsoever in that State, should become a domestic corporation of North Carolina, in the manner prescribed by the statute, upon compliance with which any such corporation should become a corporation of North Carolina the same as if originally created by the law of that State. It was enacted that after June 1st, 1899, it should be unlawful for any such corporation to do business or attempt to do business in that State without having fully complied with this Act, and any foreign corporation of the classes mentioned in the Act was forbidden to sue in the Courts of North Carolina, to enter into any contract in that State, or to enforce any contract, whether theretofore or thereafter made by it, unless before June 1st, 1899, it became a domestic corporation under and by virtue of the Laws of North Carolina. Various penalties were provided for any violation of this last named Act.

The appellant Company did not comply with the provisions of the Craig Law or become a domestic corporation of North Carolina. On the contrary, although during the previous month it had applied for and obtained a license to do business in that State during the ensuing year, yet on the 17th day of May, 1899, the appellant Company, by its Board of Directors, adopted preambles and resolutions reciting the substance of the Craig Law, and that it was neither wise nor prudent for the corporation to comply therewith, and resolving to withdraw from the State of North Carolina, to cease the transaction of business therein, to terminate the employment of all agents in its employ in that State, and specifically revoking the appointment of Young, Insurance Commissioner, as its attorney for the service of process (Record, p. 8, fol. 15). The above resolutions were filed in the office of Young, Insurance Commissioner, May 20, 1899 (Record, p. 9, fol. 16).

On May 18, 1899, this Company withdrew all its agents from North Carolina, and since that date has had no agent in North Carolina (Record, p. 9, fol. 16).

The Company had policies or contracts of insurance remaining in force in North Carolina (Record, p. 9, fol. 16). After May 18, 1899, premiums or assessments upon such policies,

made before May 17, 1899, and outstanding in North Carolina, were paid to the Company by being remitted to it direct, by mail, by the policyholders, at its home office in the City of New York, where, by the terms of the policies, such premiums were in each case payable (Record, p. 9, fol. 16). After May 18, 1899, where death losses occurred in North Carolina under policies issued before May 17, 1899, the Company has paid them to the person entitled to receive them, by mailing a check for the amount of the loss from the Company's home office in the City of New York, where, by the terms of the policies, the loss was payable (Record, p. 10, fol. 17).

The record sets forth four isolated transactions of the defendant in the State of North Carolina subsequent to May 20, 1899. The first of these transactions consisted of the rewriting for $2,000 on October 17, 1899, of a policy of insurance originally issued in 1886 for $5,000 and the mailing of the new policy from its home office in New York to the assured in North Carolina (Record, p. 11, fol. 19). The second transaction was the sending to a bank in North Carolina of a check in payment of a policy issued prior to May 17, 1899, to be delivered upon receipt of certain unpaid assessments (Record, p. 10, fol. 18). The third transaction was the adjustment in North Carolina of a loss upon a policy issued in Washington, D. C. The beneficiary meanwhile had removed to North Carolina and the adjuster followed her there. This was in June, 1902 (Record, p. 10, fol. 17). The fourth transaction was the adjustment in August, 1902, by the aid of an attorney employed for the purpose of a claim upon a policy written in North Carolina prior to May 17, 1899 (Record, p. 11, fol. 18).

It will be observed that the first and second transactions referred to were prior, while the third and fourth were subsequent, to the beginning of the actions in which these judgments were obtained. It was claimed that these transactions indicated that the defendant corporation was still at that time doing business in North Carolina. The question in this case, however, was not whether the defendant was doing business in North Carolina, but whether the Superior Court of North Carolina had jurisdiction of the person of the defendant corporation at the time it rendered the judgments. The defendant

may or may not have violated the law of North Carolina in doing these several acts. That was not material. The judgments in this case were not enforceable in New York unless the Court which rendered them first obtained personal jurisdiction of the defendant. The Court of Appeals of New York passed upon that question and decided that it did not. Did that ruling deny to plaintiff any right or privilege arising under the Constitution of the United States is the question before this Court.

FIRST POINT.

The judgments rendered by the Superior Court of North Carolina were not enforceable in New York unless that Court had jurisdiction of the person of the defendant. To obtain such jurisdiction it was necessary that process be served upon an authorized agent of the defendant corporation.

It is fundamental that in order to entitle a judgment to be enforced in another State by virtue of the provisions of Article IV, Section 1, of the Federal Constitution, the Court which rendered the judgment must have acquired jurisdiction of the person of the defendant. *Thompson v. Whitman*, 18 Wall., 457; *Huntington v. Attrill*, 146 U. S., 657, 685.

And the Court which is called upon to enforce the judgment is not concluded by anything in the judgment, but must determine for itself whether personal jurisdiction was in fact acquired. *Germania Savings & Loan Society v. Dormitzer*, 192 U. S., 125; *National Exchange Bank of Tiffin v. Wiley*, 195 U. S., 257, 269-270.

To confer jurisdiction upon the courts of a State to render a judgment against a foreign corporation, the general rule is that the two elements must exist that service be made upon an agent of the company whom the law will imply is authorized

to receive service of process, and that the corporation is engaged in doing business in such State. *Pennoyer v. Neff*, 95 U. S., 714; *St. Clair v. Cox*, 106 U. S., 350; *Goldey v. Morning News*, 156 U. S., 518; *Barrow Steamship Co. v. Kane*, 170 U. S., 100, 111.

In *Conn. Mutual Ins. Co. v. Spratley*, 172 U. S., 602, it is said: "In a suit where no property of a corporation is within the State, and the judgment sought is a personal one, it is a material inquiry to ascertain whether the foreign corporation is engaged in doing business within the State; *Goldey v. Morning News*, 156 U. S., 519; *Merchants' Manufacturing Co. v. Grand Trunk Railway Co.*, 13 Fed. Rep., 358; and if so, *the service of process must be upon some agent so far representing the corporation in the State that he may properly be held in law an agent to receive such process in behalf of the corporation*"

The converse of this proposition is equally true. If service be made upon an official of the corporation who is found in the State, it will be wholly ineffective to confer jurisdiction over such corporation, unless the corporation is doing business in the State. *Conley v. Mathieson Alkali Works*, 190 U. S., 406; *Geer v. Mathieson Alkali Works*, 190 U. S., 428.

The only modification which has been made in the above stated rule is that where the corporation has done business in a State and has incurred liabilities to residents of the State, and was, as a condition of being permitted to do such business and to enter into contracts in the State with the residents thereof, required to designate an agent in the State upon whom process might be served, that designation becomes in effect a vested right of the persons making such contracts, of which neither the act of the corporation in voluntarily withdrawing from doing business in the State nor the act of the State itself in excluding the corporation can deprive them. *Biggs v. Mutual Reserve*, 128 N. C., 5; *Moore v. Mutual Reserve*, 129 N. C., 31; *Woodward v. Mutual Reserve*, 178 N. Y., 485; *Birch v. Mutual Reserve*, 181 N. Y., 583, affd. 200 U. S., 612; *Mutual Reserve v. Phelps*, 190 U. S., 147.

The theory of these ruling is that the State in granting permission to the corporation to enter its borders and to make con-

tracts with its citizens has stipulated as a condition thereof, that each such citizen with whom the corporation makes a contract shall have the right to have his rights and obligations determined in the courts of that State, and that he shall not have to seek the tribunals of another State; that, as to each contract which the corporation makes, it does so upon this express condition, which thereby enters into the contract of such person, so that the corporation cannot deprive him of his right to appeal, if necessary, to the courts of his own State, and to bind the corporation by service upon the designated agent.

This doctrine contains nothing which warrants an extension thereof to such a case as that at bar. The condition is for the benefit and protection of a certain class of people, those with whom the corporation contracts while acting under the State's permission. As soon as that permission is surrendered or withdrawn the class is complete and cannot be enlarged.

That is the full length to which the cases have gone. No case has been cited holding that general jurisdiction, such as is claimed by plaintiff in error, can be predicated upon such facts as are set forth in this record.

SECOND POINT.

The North Carolina Court when it rendered these four judgments did not have jurisdiction of the defendant corporation. There was no service of process except upon the Insurance Commissioner, and the Insurance Commissioner was not the agent of the defendant to receive service of process in such actions.

In this case there is and can be no contention that service of process was made upon any officer or recognized agent of the defendant corporation. The only service made was upon the Insurance Commissioner. The Insurance Commissioner, while, under the authorities heretofore cited, deemed to be the agent of the corporation for accepting service in all actions upon lia-

bilities contracted by the defendant to citizens of North Carolina while doing business in that State, had no authority either in law or fact to receive service of process in any other action. Service here was therefore a nullity.

The contention that service upon the Insurance Commissioner was sufficient to give the Court jurisdiction rests upon the language of the so-called Willard Act (Record, p. 5, fol. 8) and of the power of attorney executed by the defendant corporation pursuant thereto. These were construed by the Court of Appeals adversely to the plaintiff's contention. Such conclusion did not constitute a denial of any right which plaintiff had under the Constitution of the United States, (*Smithsonian Institution v. St. John*, 214 U. S. 19; *St. Louis, K. C. & Col. R. R. Co. v. Wabash R. R. Co.*, 217 U. S. 247) and was correct.

That Act required that the corporation before being permitted to do business in the State should designate the Insurance Commissioner as its agent, upon whom process might be served, with the same force and validity as if served on the company, and that the authority thereof should continue in force irrevocable so long as any liability of the company remained outstanding in that commonwealth.

The power of attorney given by the company (Record, p. 6, fol. 10), was drawn in accordance with these requirements and filed with the Insurance Commissioner.

Prior, however, to the service of the process upon which these four judgments are based, the defendant corporation, in consequence of another statute passed in North Carolina forbidding it to transact business there except upon terms with which it could not comply, withdrew all its agents from the State, and, on May 17, 1899, formally revoked this power of attorney, delivering a copy of its resolutions revoking the same to the Insurance Commissioner on May 20, 1899 (Record, pp. 8, 9, fols. 15, 16).

This action on the part of the defendant corporation was effectual to deprive the Insurance Commissioner of all power and authority, except in the excepted cases already referred to, to represent this defendant or to bind it by his act in receiving service of process. Except as to such persons to whom the cor-

poration was then under liabilities in the State of North Carolina, the corporation had the absolute right to revoke such power of attorney and it did so. This is true not merely because the quality of revocability is inherent in a power of attorney, but as well because there was not, upon a fair construction of the language thereof, any intention on the part of the State of North Carolina to exact or of the corporation to confer a power of attorney which should be irrevocable other than as to the classes of persons already referred to.

A.

It is well settled, that a power of attorney, although irrevocable in terms, is revocable unless coupled with an interest or given for a consideration. (*Hunt v. Rousamanier's Adm.*, 8 Wheat, 174; *Knapp v. Alvord*, 10 Paige 205; *Story on Agency*, 9th Ed., page 587, §476.)

In this case the plaintiffs in these several actions, in which these judgments were recovered, had no interest in the power of attorney given to the Insurance Commissioner of North Carolina to accept service of process at the time it was given, nor had they acquired any prior to the time when it was revoked. Prior to December, 1901, the resident plaintiff in those actions (Wadsworth) had no relation to the defendant whatever, and the defendant never incurred any liability to Wadsworth directly. His only claim against the defendant was as assignee of certain alleged causes of action which arose elsewhere, three in New York and one in New Jersey, for alleged breach of contracts made in those States. For aught that appears none of the assignors was ever in the State of North Carolina. Moreover, although there had been prior similar statutes in force in North Carolina at all times while the defendant was doing business there, it is the fact that those contracts were all made long prior to the passage of the Willard Act and the execution of the power of attorney. How can it be said that the power of attorney was coupled with an interest in any of these parties?

As little is it possible to say that the power of attorney was given for a consideration. Certainly there was no considera-

tion moving to the defendant from any of these parties, neither from the assignors who had made their contracts with the defendant in New York and New Jersey respectively, nor from the assignee (Wadsworth) who never had any dealings with the defendant.

But it is unsound and untrue to say that the power of attorney was given for a consideration or that the corporation contracted generally that it should be irrevocable for all purposes so long as any liability was outstanding in North Carolina. If it be claimed that the corporation made such a contract with the State, what were the terms of that contract? What did the State contract to do? Did it bind itself to permit the corporation to carry on its business in the State for a single day even? It did not. It could have revoked the permission which it had given on the following day. And certainly in such event if the corporation had made one contract in the State it would be unreasonable and unconscionable to say that the corporation had thereby subjected itself to be sued in the courts of North Carolina upon all its contracts wherever made so long as that solitary policy-holder was alive, even though both he and the company fulfilled the obligations of their contract. The truth is that the only contract which the corporation makes is with the policy-holder and he contracts only for his own benefit and that of the beneficiary named in his policy, not for the world at large.

At most the action of the State is unilateral. It does not obligate itself, and if it be deemed that the grant of permission is a consideration for a contract by the corporation, that consideration is like the alleged obligation continuing in its nature, so that when the consideration is withdrawn the obligation must also be held to cease, except as to those parties, who, by contracting with the corporation while the permission was in force, acquired a vested right under their contracts to have the designation of an agent continued irrevocable as to them. As to all other persons, such as the plaintiffs in these actions, it is revocable.

B.

The fair construction of the so-called Willard Act is, that only a power of attorney which should be irrevocable, as to those persons who contracted with the corporation in North Carolina, was required. This statute was passed not as a part of an act defining the jurisdiction of the courts, or of an act regulating the service of process in its courts, where obviously it would have belonged, had the Legislature intended to make any such provision as is contended for by the plaintiff in error. That was not the purpose of the State. The legislature, with the object of protecting its citizens against the risk of being obliged to resort to the courts of a foreign jurisdiction, made it a condition of permitting foreign insurance corporations to come into the State, solicit local business and make contracts there, that the corporation should provide a means whereby such persons could enforce their rights against the company, so long as any of them should have claims against the defendant outstanding.

That such was the scope and purpose of the statute in question is shown by the decision of the Supreme Court of North Carolina in *Moore v. Mutual Reserve*, 129 N. C. 31 (Record, p. 15, fol. 26), where it is said: "The State had the "right to prescribe the terms upon which the defendant might "carry on its business here. * * * The defendant being "permitted, *proceeded to make contracts with the citizens of "the State, and became liable to them under these contracts.* "One of the provisions upon which the defendant was allowed "to do business here was that James R. Young, Insurance "Commissioner, and his successors in office, should be consti- "tuted its agent, upon whom service of process might be made, "and that said agency *should continue so long as* the defend- "ant had *any liabilities remaining unsatisfied in this State aris- "ing from or out of its said business of insurance* * * *

"It is conceded that, as a general rule, a principal has the "right to revoke a power of attorney at any time, whether it "is in terms irrevocable or not. But to this general rule there "are well-established exceptions as to where it is coupled with

"an interest, or where it is contractual in its nature, given for "a consideration and for the protection of some one, or some "interest. In our opinion this power falls under this excep- "tion to the general rule. It was contractual in its nature; "was given upon consideration that defendant should have the "right to carry on its business in this State, *and for the pro- "tection of those who should deal with the defendant.*"

In that case there was no holding and there has been none in any other case decided by the Supreme Court of North Carolina that the power of attorney was irrevocable as to all persons.

The plain inference from the language above quoted is that the Court regarded the power of attorney as required for the benefit of a distinct class of people, that is to say, those persons who should "deal with the defendant" in North Carolina, while the defendant was acting under the permission conferred upon it by that State. It is clear that the North Carolina Court took the same view, as to the purpose of such a statute, as did the New York Court in this case (Record, p. 44), when it said: "We, therefore, pass to the consideration of plaintiff's "second contention based upon the wording of the power of "attorney. In so doing and in construing this instrument and "determining whether defendant might revoke it and escape "from its consequences as to the majority of the judgments "involved in this action, we should keep in mind the policy "which led to the adoption of the statute under which it was "executed. This policy, briefly stated, involved and voiced the "determination upon the part of the State that it would not "allow a foreign insurance company to exercise the privilege "of doing business within the limits without securing to its "citizens who might there be dealt with, an arrangement by "which they might institute actions and enforce their con- "tracts and policies at home and without being driven into "some foreign state where the company might have its origin "and principal place of business.

"Statutes requiring the execution of some such agreement "by foreign corporations as is invoked against the defendant "here, have always been regarded as primarily designed for the "protection of the citizens of the state enacting the legislation

"and who might acquire rights under contracts executed with "them or for their benefit while they were such citizens. Such "was the underlying principle and view which led to the deci- "sions in the *Woodward* case, in *Lafayette Ins. Co. v. French* "(18 How. U. S. 404), in *Conn. Mut. Life Ins. Co. v. Spratley* "(172 U. S. 602) and in *St. Clair v. Cox* (106 U. S. 350).

"It would be quite beyond the spirit of those decisions to "hold and we cannot believe that it was the further policy of "such legislation to create and perpetuate a local forum to "which, under guise of an assignment to some resident, non- "residents of far distant states might flock for the purpose of "instituting litigation upon contracts issued to them at their "homes, against a corporation there readily subject to service "and which long before had attempted in good faith to with- "draw from the jurisdiction thus hunted out.

"Holding this view, we are not willing to decide that "defendant's power of attorney was irrevocable as against the "four foreign claims upon which recovery was had in North "Carolina. It is true that, as the statute required, said power "of attorney upon its face was irrevocable so long as any "liability of the company should remain outstanding in said "State. But it is well settled that a power of attorney, although "by its literal terms irrevocable, may be revoked unless some "interest or right founded or created upon the faith thereof "requires its perpetuation and continuance. (*Hunt v. Rous- "manier's Admr.*, 8 Wheaton, 174; *Knapp v. Alvord*, 10 Paige, "205; Story on Agency (3d ed.), sec. 476.)

"The citizens of North Carolina who had taken contracts "from the defendant while it was there doing business in "reliance upon this power of attorney which had been executed "for their protection under the requirements of the statute "were entitled to have it remain unrevoked as provided by its "terms. As we have already seen, they are to be regarded as "having made their contracts upon the faith of it, and as "against them defendant could not escape from its conse- "quences.

"But the plaintiffs in the North Carolina actions, who "secured their claims from non-resident assignors, occupied no "such position. These claims, under contracts executed in

"other states, cannot by any possibility be regarded as having "been contracted or acquired in reliance upon this provision "for service within the State of North Carolina. The assignees, "who saw fit to embark upon the acquisition of foreign claims, "did not do so in innocent reliance upon the right to bring "such suits in their own State, for long before they began the "accumulation of claims against the defendant it had formally, "and, as we believe, in good faith, withdrawn from the State "where they lived and given formal notice of its revocation of "the power of attorney. They did not acquire any such right "to enforce jurisdiction in the courts of their own State against "the defendants as makes it in any way inequitable or unjust "that the power of attorney should be revoked. They are not "of the class for whose protection it was originally executed. "They have not acquired any rights upon the faith of it. The "contracts which they seek to enforce were not secured by "defendant from those who expected protection under it. We "not only think that it is legal and equitable that defendant's "revocation should be effective as against those parties, but "that it would be extremely inequitable to hold the reverse."

The opinion of the Court of Appeals of New York has thus been set forth because it is on the face of it sound and correct, and fully in accord with the decision of this Court, giving precisely the same scope to a similar statute, in *Mutual Reserve Life Assn. v. Phelps*, 190 U. S., 147. In that case, the plaintiff, Phelps, was a citizen of Kentucky, and was sued upon a cause of action which arose out of transactions had between the plaintiff and defendant, *while the latter was carrying on business in the State of Kentucky under license from the State.* This Court said: "This and other kindred statutes enacted in "various States indicate the purpose of the State that foreign "corporations engaging in business within its limits shall *sub-* "*mit the controversies growing out of that business to its* "*courts, and not compel a citizen having such a controversy* "*to seek for the purpose of enforcing his claims the State in* "*which the corporation has its home.* * * * It would ob- "viously thwart this purpose if this association, having made, "as the testimony shows it had made, a multitude of contracts "with citizens of Kentucky, should be enabled, by simply with-

"drawing the authority it had given to the insurance commis-
"sioner, to compel all these parties to seek the courts of New
"York for the enforcement of their claims. It is true in this
"case the association did not voluntarily withdraw from the
"State, but was in effect by the State prevented from engaging
"in any new business. Why this was done is not shown. It
"must be presumed to have been for some good and sufficient
"reason, and it would be a harsh construction of the statute
"that, because the State had been constrained to compel the
"association to desist from engaging in any further business,
"it also deprived its citizens *who had dealt with the association,*
"of the rght to obtain relief in its courts."

The plaintiff in error cites no case in which such a statute as that now under discussion has received the construction which he here contends for, that such a power of attorney as that given by the defendant in this case can be kept alive by reason of such statute, except as to such persons as acquired vested rights thereunder prior to the revocation of the power of attorney. In *Johnson v. Ins. Co.*, 132 Mass., 432, and *Wilson v. Fire Alarm Co.*, 149 Mass., 24, the defendant, at the time of the service of process, had a usual place of business in Boston. The same situation existed in *Mooney v. Buford Mfg. Co.*, 72 Fed. Rep., 32. In *Youmans v. Title Ins. Co.*, 67 Fed. Rep., 282, while the defendant had ceased to do new business and had so notified the Commissioner of Corporations, there had been no revocation of the power of attorney. None of those cases therefore contains anything in conflict with the cases above cited or in any way bearing upon the question now presented.

It is unnecessary to follow the plaintiff in error into his discussion of the cases upon Interstate Commerce, which he states is confusing, as the defendant confessedly is not engaged in the business of Interstate Commerce. Nor is it necessary to discuss at this point the power of the State to impose conditions upon the grant of permission to foreign corporations to do business therein.

The question here is, what is the condition which the State imposed, and as to that the position of the defendant is that

the condition imposed was for the benefit of such persons who should deal with it in reliance thereon, and that the defendant was free to withdraw at any time from further business, just as the State was free to exclude it at any time, as was the case here, and that in either of those events it was free to withdraw its power of attorney, except as to those persons who had contracted with it in reliance on such power of attorney, and thereby acquired a vested interest in its continuance.

This position is fully sustained by the authorities above cited. It is fair and just, accomplishing the purpose of the State to protect the persons who make contracts in the State with the corporation, and not imposing an unconscionable burden upon the corporation.

Such construction of the act leaves the plaintiff in error's case without any foundation.

THIRD POINT.

As service was not made upon an agent of the company, it is immaterial whether or not defendant was doing business in North Carolina. Defendant was not in fact doing business in North Carolina.

At the outset of this discussion it must be accepted that the power of attorney to the Insurance Commissioner was revocable. If it was irrevocable for all purposes as claimed, then this question is immaterial, because service was made upon him. If it was revocable, then this question is immaterial because service was not made upon an agent of the company.

Acting upon the permission given to it by the State defendant made certain contracts of insurance in North Carolina prior to its withdrawal on May 17, 1899, many of which continued in force after the withdrawal of the company. By the terms of these contracts the premiums were payable in New York and were mailed to the company at that address by the policy holders. Losses were, likewise, payable in New York,

and were paid by the company by checks to the order of the beneficiaries, deposited in the mail in New York. After May 18, 1899, the company had no agents in North Carolina, and solicited no business there. It did no act whatever in that State except the four isolated acts detailed above, two of which took place after these four actions were instituted.

The plaintiff in error maintains that the cases of *Connecticut Mutual Ins. Co. v. Spratley*, 172 U. S. 602, and *Mutual Reserve v. Phelps*, 190 U. S. 147, conclusively establish that on those facts the defendant was doing business in the State so that valid service could be made upon an agent. This case differs from the Spratley case in that there service was made upon a regular agent of the company, who was in the State on the business of the company, and from the Phelps case, in that there service was made upon the Insurance Commissioner in a suit by a policyholder as to whom the power of attorney was irrevocable. The Phelps case adds nothing to the Spratley case upon this question. The Spratley case contained no general ruling, and is not an authority that such acts constitute a doing of business for all purposes. In that case, the corporation had written a large amount of insurance in the State before it withdrew, and thereafter it had the premiums paid to its former agent, who then resided in an adjoining State. Process was served upon this agent while in the State and this Court held that the corporation was so far doing business in that State as to support service of process, *which process*, it is to be borne in mind, *was issued in an action upon a contract made by the company while it was actually soliciting business and writing policies in the State.* As in the case of authority conferred upon the Insurance Commissioner, which was subsequently revoked (*Mutual Reserve v. Phelps*, 190 U. S. 147), the former relation was held to exist as to those outstanding liabilities. That the Court did not determine any general proposition as to this question, but only passed upon the question whether the corporation could be said to be doing business to such an extent as to be sufficient "for the purpose of a valid service" is shown by *Commercial Mutual Accident Co. v. Davis*, 213 U. S. 245, 256.

These cases simply show, that in the absence of the power of attorney to the Insurance Commissioner, the corporation could be sued by any policy-holder in North Carolina, who obtained service upon an *agent* of the corporation because the corporation in continuing its dealings with the policy-holders would be held to be so far doing business in the State as to support such service.

We are not dealing here with such a case. This is a case where a stranger to all the transactions conducted by the defendant in North Carolina instituted an action in that State against the defendant.

It is conceded that no service was made upon any regular agent of the company, and it is, therefore, unnecessary to inquire if the corporation was so far doing business as to have supported service, if such had been made upon a regular agent. The plaintiff in error must establish the proposition that the defendant was so far doing business in the State that by mere force of the statute alone the Insurance Commissioner was its agent despite the revocation of the power of attorney.

The Court of Appeals of New York, rather than falling into grave error of which the plaintiff in error can complain, took the most favorable view of the law possible to sustain the plaintiffs claim, when it declared that it would hold the revocation to be a nullity, if after the revocation the defendant had continued to do business in the State of North Carolina without the permission of the State, in violation of the statute. The Court of Appeals plainly indicated that if the defendant had done business in violation of the statute it would have held that the Insurance Commissioner was its agent *in invitum*, and that defendant would be bound by such service.

Neither the *Spratley* case nor *Commercial Mut. Ac. Co. v. Davis* (*supra*) affords any warrant for this statement. In the Spratley case there was a statute "to subject foreign corporations to suit" in that State. The first section of this act provided that any foreign corporation found doing business in the State should be subject to suit there, to the same extent that said corporations were by the laws of the State liable to be sued, *so far as related to any transaction had in whole or in part within the State*, or to any cause of action arising therein,

but not otherwise. The second section provided that any corporation that had any transaction with persons or concerning any property situated in the State, through any agency whatever acting for it within the State, should be held to be doing business within the meaning of the act. The act then provided that process might be served upon any *agent* "found within the county," etc.; and it was under this statute that this Court held that service of process upon the *agent* who actually had charge of the collection of premiums upon policies written by the company in the State was sufficient.

In *Com'l Mutual Accident Co. v. Davis* (*supra*) a statute of Missouri provided that service of process in an action against a foreign corporation "not authorized to do business in this State by the Superintendent of Insurance" might be made upon any agent who shall solicit insurance, etc., or who adjusts or settles a loss. In the case cited service was made upon an *agent* who had been sent into the State to adjust a loss and it was held the existence of contracts with residents of Missouri, the payment of premiums, etc., was a sufficient doing of business to support such service.

In these two cases cited, service was made upon an agent of the company. The real point decided by the Court, in those cases, was that: "It is not necessary that express authority to "receive service of process be shown. The law of the State may "designate an agent upon whom service may be made, if he be "one sustaining such relation to the company that the State may "designate him for that purpose, exercising legislative power "within the lawful bounds of due process of law. This was "held in effect in *Connecticut Mutual Life Insurance Com-"pany v. Spratley*, 172 U. S., 602.

"We think the State did not exceed its power and did no "injustice to the corporation by requiring that when it clothed "an agent with authority to adjust or settle the loss, such agent "should be competent to receive notice, for the company, of an "action concerning the same."

Those cases relate to service upon an *agent* of the corporation, and it was with reference to service upon such agents that this Court said: "That it is essential, in order to obtain "jurisdiction over a foreign corporation, having, as in the case

"at bar, neither property nor agent in the State, that it be "doing business in the State, is settled by numerous decisions "of this court. *St. Clair v. Cox,* 106 U. S., 350; *Goldey v. "Morning News,* 156 U. S., 518; *Barrow Steamship Company "v. Kane,* 170 U. S., 100; *Connecticut Mutual Life Insurance "Co. v. Spratley,* 172 U. S., 602; *Conley v. Mathieson Alkali "Works,* 190 U. S., 406; *Lumbermen's Insurance Company v. "Meyer,* 197 U. S., 407; *Peterson v. Chicago, Rock Island & "Pacific Railway Company,* 205 U. S., 364; *Commercial Mutual "Accident Ins. Co. v. Davis,* 213 U. S., 245, 255."

And it was with reference to service upon an *agent* that this Court declared that the doing of business shown in such cases was sufficient "for the purpose of a valid service."

There is nothing in either of those cases which will warrant a claim that the fact of doing business will do away with the necessity of the person served being an agent. In *Commercial Mut. Acc. Co. v. Davis,* this Court recognizes that the legislature may under certain limitations designate an agent upon whom service may be made. It is unnecessary to determine whether this would permit the designation of the Insurance Commissioner for the reason that North Carolina has not made such a designation. It has not declared that if a foreign corporation does business in that State service of process upon the Insurance Commissioner shall be effectual to begin an action against such corporation for any cause whatever wherever arising. If it had, it would go far beyond the provision sustained in the *Spratley* case, and it is evident that it would go beyond the "lawful bounds of due process of law."

The only thing which North Carolina did was to say to the corporation, if you want permission to do business in this State, you must *appoint* the Insurance Commissioner your agent. After this had been done, the State said that if the foreign corporation wanted to continue to do business there after June 1, 1899, it must do other things, and the corporation thereupon surrendered its permission and revoked its power of attorney.

As the State of North Carolina has made no effort to create an agency by statutory declaration, it is not necessary

to discuss its power to do so. The plaintiff in error cites numerous cases to establish the proposition that a State may impose any condition it pleases in permitting foreign corporations to enter the State to do business, and alleges that the State may absolutely forbid the corporation to do business within its borders. That there are limitations to this rule, so far as concerns the imposition of conditions, is well settled, however (*Cable v. U. S. Life Ins. Co.*, 191 U. S., 288, 307), and it may safely be denied that the State has the power to forbid the doing of such acts as this defendant is shown to have done or to impose conditions on the right to do them. While the State can forbid the corporation coming into the State to make a contract, it cannot forbid its citizens lawfully making a contract with the corporation at its domicile and thereafter performing the contract through the mail. *Allgeyer v. Louisiana*, 165 U. S. 578. The same must necessarily be true of a contract lawfully made within the State. And on the other hand it cannot say to the corporation which has lawfully made a contract while in the State that it can receive the benefits and perform the obligations only upon conditions to be set by the State. The State may exclude the corporation from its borders when it cannot exclude an individual, but it cannot impair the obligation of its contracts any more than it can an individual's, nor deprive it of the benefits which flow therefrom. *Bedford v. Eastern Building & Loan Ass'n*, 181 U. S., 227, 240.

This question is academic, however, inasmuch as the State of North Carolina has not attempted to create any such agency, and the question as to the defendant's doing business is immaterial, because of the failure to serve an agent of defendant.

FOURTH POINT.

Before it revoked the appointment of the Insurance Commissioner of North Carolina as its attorney upon whom process could be served in that State, the Mutual Reserve Fund Life Association was licensed to do business in that State; after such revocation it would have been, as to any new business which it might have done in the State, violating the North Carolina law, but not subjecting itself to the jurisdiction of the North Carolina Courts over its person by so "doing business." Any provision in the Statutes of North Carolina making it subject to such jurisdiction merely because it was "doing business" in violation of law without service upon a then authorized agent in the State is in violation of the Constitution of the United Staes and a judgment in personam against it not based on personal service on an authorized agent is void.

Calendonian Coal Co. v. Baker, 196 U. S. 432, 444.
Wetmore v. Karrick, 205 U. S. 141.
Cella Commission Co. v. Bohlinger (C. C. A.), 147 Fed. Rep. 419.

In stating the foregoing proposition, we by no means admit that the record shows that the company was "doing business" in North Carolina after the revocation of the power of attorney. On the contrary, we believe we have already demonstrated that it was not "doing business" in the State thereafter. But, even if it had been, the mere subsequent doing of business in the State would not serve to revive and reinstate the revoked power of attorney, so as to make service upon the Insurance Commissioner sufficient to sustain a judgment *in personam*. Such subsequent service to be good must be in

cases upon liabilities existing in the State of North Carolina at the time the power of attorney was revoked. Liabilities created by assignments to citizens of North Carolina from citizens of other States *long after the revocation of the power of attorney to the Insurance Commissioner* cannot become the basis of judgments *in personam* based upon service upon the Commissioner, even though it be shown that subsequent to the revocation of the power of attorney the company had again, and unlawfully, entered the State of North Carolina and transacted certain business there arising out of its old liabilities. It is not sued in this action upon such old liabilities, and service was not made upon the persons or agents through whom it conducted such new transactions. The mere "doing" of new business in the State did not suffice to again make the Insurance Commissioner an attorney in fact upon whom process could be served in cases based on such newly created, assigned claims.

FIFTH POINT.

The judgments upon which this action was founded were entered by the North Carolina Court without its having jurisdiction of the defendant. They were therefore not enforceable in New York, and the judgment of the Court of Appeals should be affirmed.

WILLIAM BEVERLY WINSLOW,
Solicitor for Receivers
Defendants in Error.

WILLIAM HEPBURN RUSSELL,
FRANK H. PLATT,
Of Counsel.